

MATTHEW KANNY (SBN 167118)
mkanny@manatt.com
ADRIANNE MARSHACK (SBN 253682)
amarshack@manatt.com
SIRENA CASTILLO (SBN 260565)
scastillo@manatt.com
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

JUDY LONDON (SBN 149431)
jlondon@publiccounsel.org
SARA VAN HOFWEGEN (SBN 266985)
svanhofwegen@publiccounsel.org
MARY TANAGHO ROSS (SBN 280657)
mross@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, CA 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

BREE BERNWANGER (NY 5036397)
pro hac vice
bbernwanger@lccrsf.org
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY
AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296

Attorneys for *Plaintiffs*
J.L., M.D.G.B., J.B.A., and M.G.S. on behalf
of themselves and all others similarly situated

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

J.L., M.D.G.B., J.B.A., and M.G.S., on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

KENNETH T. CUCCINELLI, Director, U.S.
Citizenship and Immigration Services, KEVIN
K. MCALEENAN, Acting Secretary, U.S.
Department of Homeland Security, ROBERT
COWAN, Director, National Benefits Center,
U.S. Citizenship and Immigration Services,
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, and UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

Case No. CV 18-4914

**MOTION FOR FINAL APPROVAL OF
SETTLEMENT AGREEMENT AND
APPROVAL OF NOTICE TO CLASS OF
SETTLEMENT**

Filed Concurrently

1. Declaration of Sirena P. Castillo; and
2. [Proposed] Order

DATE: December 18, 2019
TIME: 1:00 p.m.

Hon. Nathanael M. Cousins

Action Filed: August 14, 2018

**NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND APPROVAL OF NOTICE TO CLASS OF SETTLEMENT**

PLEASE TAKE NOTICE that on December 18, 2019 at 1:00 p.m., or as soon thereafter as the motion may be heard, at the United States District Court of the Northern District of California, San Jose Division, before the Honorable Nathanael Cousins, Plaintiffs J.L., M.D.G.B., J.B.A., and M.G.S. (collectively, “Plaintiffs”), individually and on behalf of those similarly situated, will and hereby do move for Final Approval of the Settlement Agreement of the above-captioned class action, and for approval of notice to the Class of the Settlement Agreement, pursuant to Federal Rule of Civil Procedure 23(e). This motion is made pursuant to Federal Rule of Civil Procedure 23(e). Plaintiffs’ Motion is based on this Notice of Motion and Motion, the Declaration of Sirena P. Castillo (“Castillo Decl.”), and all exhibits thereto, all pleadings on file, and such other support as may be presented to the Court.

On October 30, 2019, the Court entered an Order Preliminarily Approving Settlement and Approving Notice of Proposed Settlement and Fairness Hearing (the “Preliminary Approval Order”) and directed that notice be given to the members of the Class of the proposed Settlement and Fairness Hearing. Dkt. 218. In accordance with the Preliminary Approval Order, Plaintiffs and Defendants Kenneth T. Cuccinelli, II, Acting Director of United States Citizenship and Immigration Services (“USCIS”), Robert Cowan, Director of the National Benefits Center, Kevin McAleenan, Acting Secretary of the Department of Homeland Security (“DHS”), as well as USCIS and DHS (“Defendants”) (with Plaintiffs and Defendants collectively referred to herein as the “Parties”) distributed the Notice to all Class Members through the following manner on November 1, 2019: (i) Plaintiffs posted the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on the Public Counsel website and the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area’s website; (ii) Plaintiffs directly contacted the individual Class Members, through their counsel, that Plaintiffs identified in connection with the declarations previously filed in this case, and provided a copy of the Class Notice (in English and Spanish), including a copy of the Settlement Agreement; (iii) Defendants posted the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on USCIS’s website on the “Legal Resources, Legal Settlement Notices” and

the “Special Immigrant Juveniles” sections; (iv) Plaintiffs distributed the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on relevant email/listserv mailing lists for direct service providers; and (v) Defendants emailed the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, to its approximately 47,000 subscribed users). The Notice informed Class Members of the Settlement terms and that the Court would consider the following issues at the Fairness Hearing: (a) whether the Court should grant final approval to the Settlement; (b) whether the Court should enter final judgment dismissing the Action with prejudice; and (c) any objections by members of the Class to any of the above that were timely and properly served in accordance with the Preliminary Approval Order. No objections to the Settlement were filed with the Court. A proposed Updated Class Notice (“Updated Notice”) to be distributed upon final approval of the Settlement as outlined in Section IV.G of the Settlement Agreement (*see* Dkt. 211-2 at 11-12) has been attached hereto as Exhibit A. *See* Castillo Decl., ¶ 2, Ex. A.

Further, in accordance with the Preliminary Approval Order and the Settlement Agreement as outlined in Section IV.E (*see* Dkt. 211-2 at 10-11), Defendants provided Plaintiffs with the Class List on November 13, 2019. Plaintiffs became aware of corrections and additions to the Class List, and the Parties have exchanged correspondence regarding these issues, pursuant to the terms of the Settlement Agreement, which are attached hereto as Exhibit B. *See* Castillo Decl., ¶ 3, Ex. B.

Next, as outlined in Section XI of the Settlement Agreement (*see* Dkt. 211-2 at 19), the Parties have attempted to negotiate Equal Access to Justice Act (“EAJA”) fees and costs. To the extent the Parties are unable to reach an agreement, Plaintiffs will file a motion for EAJA fees and costs no later than thirty days following the final disposition of the case. *Id.*

Finally, Plaintiffs have recently become aware that Defendants have violated the Court’s October 24, 2018 Preliminary Injunction Order (the “PI Order”) by removing a Class Member without providing 14-days’ notice to Plaintiffs’ counsel.¹ Plaintiffs recognize the PI Order “dissolves ipso facto when a final judgment is entered in the case.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1093–94 (9th Cir. 2010). Plaintiffs also recognize that a court has ancillary jurisdiction to

¹ Additional information regarding the violation and the Parties’ meet and confer efforts will be filed with the Court on December 13, 2019.

“vindicate its authority and effectuate its decrees,” which continues even after the action has been terminated. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380 (1994). That ancillary jurisdiction extends to the ability to seek damages for any violation of the PI Order that may have occurred while the Order was in effect. *See U.S. Phillips Corp.*, 590 F.3d at 1095 (holding the entry of default judgment “does not affect [Plaintiff’s] continuing ability to seek damages, through contempt proceedings, for any violations of the TRO and preliminary injunction that may have occurred while those orders were in effect”). Plaintiffs requested that Defendants confirm that there are no other class members who have been removed since the PI Order went into effect, however, as of the time of this filing, they have not yet done so. Because issues related to the violation may not be resolved by the date of final approval of the Settlement Agreement and entry of final judgment, Plaintiffs request that the Court explicitly retain jurisdiction to address any violations of the PI Order.

For the foregoing reasons, Plaintiffs respectfully request an order approving the Settlement Agreement, ordering the Updated Notice to be sent to the Class, retaining jurisdiction over the Settlement Agreement for the purpose of enforcing any of its provisions and terms, and retaining jurisdiction over the issue of attorneys’ fees and costs and violations of the PI Order that may be unresolved by the Parties.

Dated: December 11, 2019

MANATT, PHELPS & PHILLIPS, LLP
MATTHEW KANNY
ADRIANNE MARSHACK
SIRENA CASTILLO

PUBLIC COUNSEL
JUDY LONDON
SARA VAN HOFWEGEN
MARY TANAGHO ROSS

LAWYERS’ COMMITTEE FOR CIVIL RIGHTS OF
THE SAN FRANCISCO BAY AREA
BREE BERNWANGER

By: /s/ Sirena P. Castillo

Sirena Castillo

Attorneys for *Plaintiffs*

J.L., M.D.G.B., J.B.A., and M.G.S., on behalf
of themselves and all others similarly situated

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2019, the foregoing document was electronically filed with the Clerk of the Court for U.S. District Court, Northern District of California, through the CM/ECF system. All parties are registered CM/ECF users and will be served through the CM/ECF system.

By: /s/ Sirena P. Castillo

205651855.1